Supreme Court, U.S.
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No. 00-

IN THE

Supreme Court of the United States

CHARLES L. GRIMES,

Petitioner,

v.

JAMES W. WETZLER, individually, MICHAEL H. URBACH, as Tax Commissioner of the State of New York, PHILLIP ZURLO, WARREN BROWN, MARY ANN LIN, and SUNEIL MEHRA, individually and as employees of the Department of Taxation and Finance of the State of New York,

Respondents.

On Petition for Writ of Certiorari to the Superior Court of Pennsylvania

PETITION FOR WRIT OF CERTIORARI

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April 27, 2001

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QUESTION PRESENTED

Petitioner exercised his constitutional right to change his domicil from New York to Pennsylvania. New York officials denied that he had exercised this constitutional right, denied that he was domiciled in Pennsylvania, and sought to tax him as a New York domiciliary at the same time Pennsylvania was taxing him as a Pennsylvania domiciliary.

Can the courts of Pennsylvania entertain a declaratory judgment action between petitioner and the New York officials to vindicate his exercise of his constitutional rights, and settle the question of his domicil as between Pennsylvania and New York?

PARTIES TO THE PROCEEDING

The caption of the case contains the names of all the parties.

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PETITION FOR WRIT OF CERTIORARI

Charles L. Grimes ("Grimes") respectfully petitions for a writ of certiorari to the Superior Court of Pennsylvania.

I. PRELIMINARY

A. Reports of Opinions and Orders in the Case

The decisions and orders of the court of first instance, the Court of Common Pleas of Chester County, Pennsylvania, are unreported. They appear at App. 14a-App. 30a. The decision of the Superior Court of Pennsylvania on appeal, with respect to which certiorari is sought, is reported at 2000 Pa. Super. 90 (March 23, 2000), 749 A.2d 535 (Pa. Super. 2000), and is reprinted at App. 1a-App. 13a. The order of the Supreme Court of Pennsylvania denying leave to appeal, dated February 6, 2001, is reprinted at App. 31a.

B. Basis for Jurisdiction in This Court

This Court has jurisdiction under 28 U.S.C. § 1257(a).

C. Statutes Involved in the Case

The Civil Rights Act of 1871, 42 U.S.C § 1983:

> "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . ., subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

42 PA. CONS. STAT. ANN. §§ 5322(a)(4) and 5322(b):

"(a) **General rule.** — a tribunal of this Commonwealth may exercise personal jurisdiction over a person ... who acts directly or by an agent, as to a cause of action or other matter arising from such person:

"....

"(4) Causing harm or tortious injury in this Commonwealth by an act or omission outside this Commonwealth.

"....

"(b) **Exercise of full constitutional power over nonresidents.** — In addition to the provisions of subsection (a) the jurisdiction of the tribunals of this Commonwealth shall extend to all persons who are not within the scope of section 5301 (relating to persons) to the fullest extent allowed under the Constitution of the United States and may be based on the most minimum contact with this Commonwealth allowed under the Constitution of the United States."

II. STATEMENT OF THE CASE

1. Petitioner Grimes was domiciled in New York prior to 1978. In that year he exercised his right, secured by the constitution of the United States,[1] to change his domicil to Pennsylvania. He has remained domiciled in Pennsylvania at all times thereafter, paying income tax to Pennsylvania on all his income from all sources every year, as a Pennsylvania domiciliary.

The respondents, taxing authorities of New York,[2] refused to recognize his exercise of the right to change domicil, asserted that he was a New York domiciliary and therefore liable for New York income taxes on all his income from all sources whether or not connected with New York, and on that basis assessed against him large income taxes, plus roughly three times as much again in claimed interest and penalties.

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[1] *E.g.*, *Saenz* v. *Roe*, 526 U.S. 489 (1999); *Jones* v. *Helms*, 452 U.S. 412, 417-18 (1981); *Attorney General of New York* v. *Soto-Lopez*, 476 U.S. 898, 901-903 (1980); *Oregon* v. *Mitchell*, 400 U.S. 112, 285 (1970) (concurring opinion); *Slaughter-House Cases*, 83 U.S. (16 Wall.) 36, 80 (1873).

[2] Respondent Wetzler was Commissioner of Taxation and Finance, commonly called "Tax Commissioner," of the State of New York throughout the 1990-94 period, when the harassment of Grimes's rights began and when the action was commenced, and was ultimately responsible for setting and overseeing policy and collecting state income and other taxes. Respondent Urbach succeeded Wetzler in 1994. Respondents Philip Zurlo, Warren Brown, Mary Ann Lin, and Suneil Mehra, were participants in an effort to extract taxes from Plaintiff for the year 1987 on the spurious charge that he was a New York domiciliary for that year. Mehra was an auditor. Lin was Mehra's supervisor. Brown was Lin's superior. Zurlo was Brown's superior. Wetzler, and subsequently Urbach, were over them all.

2. Grimes accordingly brought suit against respondents for a declaratory judgment establishing that he had effectively exercised his constitutional right to change domicil, and was and is domiciled in Pennsylvania. Suit was brought under 42 U.S.C. § 1983, in that the actions of the respondents directly denied his exercise of his constitutional right to change domicil from one state to another.[3] The action was brought in the Court of Common Pleas of Chester County, Pennsylvania, Grimes's home court.

The complaint, filed November 5, 1993, asserted personal jurisdiction over respondents under the Pennsylvania "long arm" statute, which extends personal jurisdiction "to the fullest extent allowed under the Constitution of the United States." 42 PA. CONS. STAT. ANN. § 5322(b), quoted *supra*; Complaint, Part V, ¶ 4, App. 34a. It alleged that the actions of defendants in denying Grimes's exercise of his right to change domicil to Pennsylvania were targeted upon Pennsylvania, and the effects thereof — such as the shadow cast on his right to vote in Pennsylvania, uncertainties as to his tax obligations, uncertainty as to estate planning, uncertainty as to his

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[3] In addition, the denial that he had exercised his right to change domicil interfered with his exercise of his constitutional right of free travel between Pennsylvania and New York. *E.g.*, *United States* v. *Guest*, 383 U.S. 745 (1966); *Edwards* v. *California*, 314 U.S. 160 (1941); *Crandall* v. *Nevada*, 73 U.S. (6 Wall.) 35 (1868). A New York domiciliary is limited to 90 days' worth of visits to New York per year, or he will be taxed on all his income — even if he has no "permanent place of abode" in the state. A New York domiciliary who saves on hotel bills by keeping a "permanent place of abode" in New York is taxed on all his income no matter how much or how little he visits the state; a non-domiciliary who does so is allowed to visit for 182 days in the year without being taxed on all of his income. Denial that Grimes had exercised his right to change domicil thus interfered with his unhindered exercise of his constitutional right of interstate travel, by effectively taxing it if exercised beyond a certain minimum.

ability to travel freely to New York — were felt by him in Pennsylvania. Complaint, Part V, ¶ 4, App. 34a-App. 37a. It sought a declaratory judgment as to Grimes's domicil in order to terminate the controversy as to whether he had exercised his constitutional right to change his domicil, plus ancillary relief. Complaint, Part VIII, App. 53a. The Commonwealth of Pennsylvania itself was served pursuant to Pennsylvania law. Complaint, Part VII, App. 52a-App. 53a.

The case in no way involved construction or constitutionality of the tax laws or regulations of New York. Grimes did not contend that the amount or computation of the assessment actually issued against him was erroneous (*if* he had been a New York domiciliary), did not seek any refund or correction of assessment, and did not raise any issue of unfairness or discrimination or of constitutionality of the tax law itself.[4] The *sole* issue presented was whether Grimes had exercised his right to change domicil to Pennsylvania, together with the acts of respondents to deprive him of that right.

3. The respondents filed on December 28, 1993, a motion to dismiss for lack of personal jurisdiction over the defendants.[5] The trial court denied the motion by order of

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[4] The case thus does not implicate the Tax Injunction Act, 28 U.S.C. § 1341. *Contrast Nat'l Private Truck Council, Inc.* v. *Oklahoma Tax Comm'n*, 515 U.S. 582 (1995), in which this Court held that the policy of the Tax Injunction Act precludes, under most but not all circumstances, declaratory and injunctive relief under § 1983 in an action in state courts for refund of a tax alleged to be unconstitutional under the dormant Commerce Clause. Moreover, as the trial court held, New York tax appeals do not provide an adequate remedy for the matters at issue here. App. 28a.

[5] Called under local procedure a "preliminary objection." For ease of comprehension we employ here the familiar equivalent terminology under federal procedure.

December 27, 1994. App. 14a. On motion for rehearing, on June 11, 1996, the trial court again denied the motion, with a memorandum opinion in which it relied specifically on this Court's decision in *Calder* v. *Jones*, 465 U.S. 783 (1984) (forum state has personal jurisdiction over defendants who commit tort out of state directed at forum state and its citizen and brunt of which is felt in forum state). App. 21a.

4. Meanwhile, with respect to the specific year (1987) for which the New York authorities had actually issued an assessment, Grimes pursued an appeal through the New York state system. After evidence of his Pennsylvania domicil was presented before an administrative law judge at a hearing in Troy, New York, the attorney for the state — who is independent of the taxing authorities themselves — abandoned the case. Respondents then withdrew the assessment for the single year there involved and conceded by an amended Answer in this action that Grimes had in fact been domiciled in Pennsylvania for that particular year. They refused, and still refuse, to make any concession other than with respect to that specific year; leaving it open for them to contend once again, for some other year, that Grimes did not exercise his right to change domicil.

5. On November 17-19, 1997, the trial court held a trial on certain of the ancillary relief sought by Grimes: specifically, damages against the respondents sued in their individual capacities, *Hafer* v. *Melo*, 502 U.S. 21 (1991), for the expenses incurred and other legal injury suffered by him in connection with the assessment for the year 1987. It concluded that the respondents were shielded against damages by the qualified immunity doctrine. It had already declined to issue a declaratory judgment terminating the controversy, relying on state law. App. 25a.

In its Adjudication after trial, it reiterated its determination that it had personal jurisdiction, again citing *Calder* v. *Jones*. App. 29a. It adhered to its rulings on post-trial motions. App. 30a.

6. Grimes appealed to the Superior Court of Pennsylvania, assigning two federal grounds of error: that the trial court erroneously applied state law limitations to determine whether a declaratory judgment should be issued in a § 1983 action;[6] and that the trial court had erred in its interpretation and application of the qualified immunity doctrine. Respondents cross-appealed on the ground that the trial court had erred in not granting its motion to dismiss for lack of personal jurisdiction.[7]

The Superior Court held that the trial court had erred in not granting respondents' motion to dismiss for want of personal jurisdiction over respondents. Purportedly applying the broad general principles enunciated in such familiar cases as *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S. 286 (1980), and *Burger King* v. *Rudzewicz*, 471 U.S. 462 (1985), it did not even refer to, much less attempt to deal with, this Court's decision in *Calder* v. *Jones*, 465 U.S. 783 (1984), relied on by the trial court. (Having held that there was no personal jurisdiction, it did not address other issues on appeal.) App. 9a-App. 13a.

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[6] *See, e.g., Felder* v. *Casey*, 487 U.S. 131 (1988); *Maine* v. *Thiboutot*, 448 U.S. 1 (1980).

[7] Again, for convenience we use the federal terminology to describe the appeal and cross-appeal. Grimes also appealed on the state law ground that even if Pennsylvania law governed the determination of whether a declaratory judgment should be issued, the trial court had applied erroneous standards under that law.

7. Grimes timely sought leave to appeal to the Supreme Court of Pennsylvania. That court denied leave on February 6, 2001. App. 31a.

8. Under Rule 14(1)(g)(i) of this Court, it will be noted that the original complaint specifically assigned 42 PA. CONS. STAT. ANN. §§ 5322(a)(4) and 5322(b), *supra*, as basis for personal jurisdiction over respondents, employing the language of *Calder* v. *Jones* in alleging "that the acts and threatened acts set forth herein were and are expressly aimed and purposefully directed at (a) plaintiff, a resident of this Commonwealth and this county, (b) at this Commonwealth, and (c) at plaintiff's change of domicil to this Commonwealth and this county," causing "harm and tortious injury in this Commonwealth and this county" in numerous specified respects, Complaint, Part V, ¶ 4, App. 34a-App. 37a; that the respondents filed preliminary objections claiming lack of personal jurisdiction, which were denied by the trial court and denied again on motion for reconsideration; that the trial court's Adjudication after trial reiterated its prior decision, as did its decision on post-trial motions; that the issue was brought before the Superior Court by the appeal and cross-appeal and decided by that court; and that leave to appeal that decision to the Supreme Court of Pennsylvania was sought and denied. The question was thus properly raised and preserved throughout the course of the action. App. 55a. Since the state long-arm statute at issue expressly extends jurisdiction "to the fullest extent allowed under the Constitution of the United States" and provides that it "may be based on the most minimum contact with the Commonwealth allowed under the Constitution of the United States," a decision that Pennsylvania had no personal jurisdiction presents a federal question. *See Ohio* v. *Reiner*, 532 U.S. ___, 2001 WL 262448 (March 19, 2001); *Burnham* v. *Superior Court*, 495 U.S. 604 (1990);

Delaware v. *Prouse*, 440 U.S. 648 (1979); *Standard Oil Co.* v. *Johnson*, 316 U.S. 481 (1942).

III. REASONS FOR ALLOWANCE OF THE WRIT

In summary:

This case is important not merely because the decision of the court below that the Pennsylvania courts had no jurisdiction is erroneous in itself, but because such a conclusion forestalls the correction of the widely-felt and longstanding injustice of double taxation.

A state can impose income and estate taxes on its domiciliaries to a far greater extent than on anyone else. And since a person can be domiciled in only one state, only one state should be able to impose this maximum burden on him or her.

But, if the courts of State A determine that a person is domiciled in State A and taxable by State A on that basis, and the courts of State B determine that the same person is domiciled in State B and taxable by State B on that basis, neither state will be bound by the other's adjudication. And as a result, the person will be taxed by both states as a domiciliary.

This has long been felt as an injustice and perceived as a singular quirk of the federal system. Yet, until this case, no satisfactory means has been found to bind the authorities of both states in a single determination of domicil.

Such a means was found here. The actions of the New York authorities sought to deprive Grimes of his constitutional right to change domicil from New York to Pennsylvania, as well as harassing free exercise of his right of interstate travel. He has an action under 42 U.S.C. § 1983 against them to vindicate those rights. If he brought it in

New York, the Pennsylvania authorities would not be bound by the decision. But he can bring it in state court in Pennsylvania. The state court has personal jurisdiction over the New York authorities in such an action under *Calder* v. *Jones*, 470 U.S. 392 (1984), which, to repeat, holds that the forum state has personal jurisdiction over defendants who commit a tort out of state directed at the forum state and its citizen, and the brunt of which is felt in the forum state. And he can serve the Commonwealth of Pennsylvania as provided by state statute, so that its authorities will likewise be bound by the decision.

The court below foreclosed this long-sought solution by its decision that the state court had no personal jurisdiction over the New York authorities. Under *Calder* v. *Jones*, this was simply wrong. Moreover, its erroneous reasoning would apply to any similarly situated taxpayer in any similar action in any state. Correction of that error by this Court will open the way at last to the long-sought solution of the double taxation problem.

In Part A we will first review the vexed history of the double taxation problem and its importance. In Part B we point out why the decision of the court below as to personal jurisdiction was in error.

A. This Case Presents an Issue of Substantial Public Importance, in That the Decision of the Court Below Forecloses a Long-Sought Solution for the Recognized Injustice of Double Taxation When Two States Both Claim the Taxpayer as a Domiciliary (the "*Dorrance* Problem").

For decades, the "*Dorrance* problem,"[8] under which double (or multiple) taxation is imposed because two (or more) states each claim that the taxpayer is its domiciliary, has been recognized as a substantial injustice. For decades, a solution has been sought under which a determination of domicil binding on both interested taxing authorities could be obtained. Such a solution, at least for one common situation, was found in this case, only to be foreclosed by the erroneous decision of the court below with respect to personal jurisdiction.

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[8] The problem first attracted substantial attention in the litigation in the early 1930s involving taxation of the estate of one Dorrance, a principal in the Campbell Soup Company. *In re Dorrance's Estate*, 309 Pa. 151, 163 Atl. 303, *cert. denied*, 287 U.S. 660 (1932) (federal question not properly presented to, or passed upon by, Pennsylvania Supreme Court); *In re Dorrance's Estate*, 172 Atl. 900 (Pa. 1932) (decision reaffirmed), *cert. denied*, 288 U.S. 617 (1932); *New Jersey* v. *Pennsylvania*, 287 U.S. 580 (1932) (motion for leave to file complaint under Court's original jurisdiction denied); *Pennsylvania* v. *New Jersey*, 288 U.S. 618 (1933) (same); *Dorrance* v. *Martin*, 12 F.Supp. 746 (D.N.J.) (attempt to enjoin collection of New Jersey's assessment dismissed on grounds that federal jurisdiction was lacking), *aff'd sub nom. Hill* v. *Martin*, 296 U.S. 393 (1935); *In re Dorrance's Estate*, 113 N.J.Eq. 266, 166 Atl. 177 (Prerog. Ct. 1933), *aff'd*, 115 N.J.Eq. 268, 170 Atl. 601 (Prerog. Ct.), *supplemented by* 116 N.J.Eq. 204, 172 Atl. 503 (Prerog. Ct. 1934), *aff'd sub nom. Dorrance* v. *Thayer-Martin*, 13 N.J. Misc. 168, 176 Atl. 902 (1935), *aff'd*, 116 N.J.L. 362, 184 Atl. 743, *cert. denied*, 298 U.S. 678 (1936) (ultimately both states permitted to levy estate tax on Campbell Soup fortune left by Dorrance).

The "*Dorrance* problem" arises as follows:

A state has special taxing authority over its domiciliaries. It can tax the income of its domiciliaries derived from all sources worldwide, whether they have any connection with the state or not. *New York ex rel. Cohn* v. *Graves*, 300 U.S. 308 (1937); *Lawrence* v. *State Tax Comm'n*, 286 U.S. 276 (1932). And while any state with a taxing nexus can in theory levy an estate tax on a decedent's intangibles, *State Tax Comm'n* v. *Aldrich*, 316 U.S. 174 (1942), in practice substantially all states have restrained themselves and "have effectively decreed that only the state of domicile may levy an estate tax." Note, *Due Process Limits on State Estate Taxation: An Analogy to State Corporate Income Tax*, 94 YALE L.J. 1229, 1233 and note 25 (1985).

All states recognize that "at least for the same purpose, no person has more than one domicil at a time." RESTATEMENT (SECOND) OF CONFLICTS, § 11(1) (1969). In theory, therefore, all states recognize that only one state can tax a person as a domiciliary. But in practice the courts of two states may reach different conclusions from the same set of facts, and each find that a taxpayer is domiciled in its state; and neither court's decision is binding on the officials of the other state unless they or their state were parties. The anomalous result is double taxation. Thus, in the eponymous *Dorrance* litigation itself, the Pennsylvania courts held that Dorrance had been domiciled in Pennsylvania and the New Jersey courts held that he had been domiciled in New Jersey. The estate was stuck with full taxes for both states.

While the *Dorrance* problem has received most attention in connection with death duties, a similar problem can arise in connection with income taxes. Indeed, double taxation in the income tax field is a far

more widespread problem, affecting more rank and file individuals, than in the estate tax field. *Cf.* Note, *"Resident" Taxpayers: Internal Consistency, Due Process, and State Income Taxation*, 91 COLUM. L. REV. 119 (1991); Association of the Bar of the City of New York Committee on Personal Income Taxation, *Individual Double Taxation in the Tri-State Region*, Report ID No. 93141 (1994).[9] Here, New York asserted the right to tax

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[9] With respect to income taxes the picture is complicated somewhat by the concept that due process allows a state to tax all income of a "resident." JEROME B. HALLERSTEIN & WALTER HALLERSTEIN, STATE TAXATION ¶ 20.04[1] (2000). "Residence" is less absolute than "domicil"; a person can have more than one "residence." While the states have limited their estate taxation to the estates of domiciliaries, they have shown no comparable restraint in the income tax field. They have, however, generally if not universally defined "residence" for income tax purposes partly in terms of domicil, thus posing the *Dorrance* problem. For example, New York applies all-sources taxability to "residents," and includes as "residents" those domiciliaries who either maintain a "permanent place of abode" in the state or are present therein for more than 30 days in the year. There is no generally accepted definition of "residence"; the permissible bounds of the concept have not been defined by this Court, and it has been suggested that some states' definitions are too broad. Thus, New York declares that a non-domiciliary who maintains a "permanent place of abode" somewhere in the state and is present somewhere in the state on more than 183 days is a "resident"; but it has been commented that such a definition "is not what Justice Stone [in *Cohn*] had in mind, and is not consistent with the Due Process clause." Note, *"Resident" Taxpayers: Internal Consistency, Due Process, and State Income Taxation*, 91 COLUM. L. REV. 119, 134 (1991). (The uncertainty is ultimately rooted in the fact that the *Cohn* opinion used the concepts of "residence" and "domicil" interchangeably; on careful reading it appears that the opinion actually intended to limit all-source income taxation to the domiciliary state. *E.g.*: "That the receipt of income by a *resident* of the territory of a taxing sovereignty is a taxable event is universally recognized. *Domicil* itself affords a basis for such taxation. ... The tax ... is founded upon the protection afforded by the state to the recipient of the income. ... These are rights and powers which attach to *domicil* within the state." 300 U.S. at 312-13 (emphasis added).)

Grimes — already paying income taxes to Pennsylvania on all his income, as a Pennsylvania domiciliary — on all his income from all sources, whether or not related in any way to New York, based on the claim that he was a New York domiciliary; producing a situation for income taxes equivalent to the *Dorrance* problem for death duties.

For decades the *Dorrance* problem has been recognized as a gross injustice. As Professor Zachariah Chafee, Jr., forcefully observed of this "highly unfair" situation more than sixty years ago:

> "In a nation with a unified government, the situation in which estates of decedents are here left remediless would be impossible. Either only one agency would impose death taxes; or else a single court of review would determine domicil as between two local taxing agencies. It is our federal system which creates the possibility of double taxation. Somewhere within that federal system we should be able to find remedies for the frictions which that system creates."

Chafee, *Federal Interpleader Since the Act of 1936*, 49 YALE L.J. 377, 384, 388 (1940), quoted with approval by Justices Stewart, Powell, and Stevens, dissenting in *California* v. *Texas*, 437 U.S. 601, 607 n.8, 615 (1978) ("*California* v. *Texas (I)*").

Efforts to find in the federal district courts a judicial remedy[10] for those "frictions" have heretofore foundered

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[10] Extrajudicially, with respect to death duties there exist a Uniform Interstate Compromise of Death Taxes Act, 8A ULA 124 (Supp. 1994), and a Uniform Interstate Arbitration of Death Taxes Act. 8A ULA 122 (Supp. 1994). These have been adopted by only some one-third of the states and do not deal with income taxes. HALLERSTEIN & HALLERSTEIN at ¶ 21.09[1].

upon the Eleventh Amendment together with the principle that double taxation does not of itself transgress due process. *Worcester County Trust Co.* v. *Riley*, 302 U.S. 292 (1937) (interpleader of taxing authorities by taxpayer barred by Eleventh Amendment; no allegation of violation of federal law or constitution other than double taxation itself); *Cory* v. *White*, 457 U.S. 85 (1982) (reaffirming *Worcester County*; again, no allegation of violation of independent federal right). An interpleader or other action between the interested states under this Court's original jurisdiction is hardly feasible except for rare cases involving enormous tax liabilities. *E.g.*, *Texas* v. *Florida*, 306 U.S. 398 (1939) (fortune of Hetty Green); *California* v. *Texas (I)*, *supra* (fortune of Howard Hughes); *California* v. *Texas*, 457 U.S. 85 (1982) (same) ("*California* v. *Texas (II)*"). Even this approach has been curtailed by the requirement that at a minimum such actions must allege a risk that double tax liability would exhaust the estate; moreover, this approach is always subject to the prudential factors that limit this Court's decision to exercise its original jurisdiction. *California* v. *Texas (II)*, 457 U.S. at 168; *Massachusetts* v. *Missouri*, 301 U.S. 9 (1939). And in the lower courts, since, under *Cory* and *Worcester County*, double taxation resulting from inconsistent determinations of domicil does not of itself violate due process, a § 1983 action based solely on double taxation will not lie.

A clear solution to this vexed problem, at least where, as here, the action of the authorities directly violates an independent constitutional right, is presented by an action for declaratory relief under § 1983 (which does not implicate the Eleventh Amendment, under the familiar principle of *Ex parte Young*, 209 U.S. 123 (1908); *see Will* v. *Michigan Dep't of State Police*, 491 U.S. 58, 65 n.10 (1989)), in the domiciliary's state court to obtain an adjudication of

domicil binding on the authorities of both states.[11] That was the situation here, where the respondents sought to deprive Grimes of his rights of free interstate migration and free interstate travel; the state was served under Pennsylvania procedure; and the state court had — but for the erroneous decision below — personal jurisdiction over the New York officials for this purpose.

This case thus presents a matter of major importance — the long-sought avenue for solution of the *Dorrance* problem in many if not all circumstances.

B. The Decision Below Is Manifestly Inconsistent With This Court's Decision in *Calder* v. *Jones*, 465 U.S. 783 (1984), With Respect to the Exercise of Personal Jurisdiction.

The court below forestalled this beneficial result by its holding that the trial court had no personal jurisdiction over the respondents. This was plain error and could only be reached by ignoring — as the court below in fact did — this Court's decision in *Calder* v. *Jones*, 465 U.S. 783 (1984).

In that case a unanimous Court held that where "the plaintiff is the focus of the activities of the [out-of-state defendants] out of which the suit arises," 465 U.S. at 788, where the forum state is the "focal point" of the challenged activity and of "the harm suffered," *ibid.*, where the out-of-state defendants "are primary participants in an alleged wrongdoing intentionally directed at a [forum state] resident," then the forum state's "jurisdiction over them is proper on that basis." 465 U.S. at

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[11] State courts have not only the power but the duty to entertain § 1983 actions. *E.g.*, *Howlett* v. *Rose*, 496 U.S. 356 (1990). An action in the other state — here, New York — would not solve the problem, because the officials of the home state — here, Pennsylvania — could not be joined.

790. Thus, the Court held, "jurisdiction over [respondents] in California [here, Pennsylvania] is proper because of their intentional conduct in Florida [here, New York] calculated to cause injury to [petitioner] in California [here, Pennsylvania]." 465 U.S. at 791.

Calder v. *Jones* squarely governs this case.[12] Though most of the relevant activity of the respondents took place in New York (but not all; two of the respondents physically searched in Pennsylvania for Grimes's home there), respondents' denial of Grimes's Pennsylvania domicil is, by definition, intentionally directly targeted at and focused upon Grimes and on Pennsylvania and on their relationship to each other.

It was most assuredly focused and targeted upon Grimes.

It was equally focused and targeted upon Pennsylvania. (Indeed, where two sovereigns are not tied by the bonds of federation, it has long been regarded as a *casus belli* for one sovereign to claim another sovereign's citizens as his own. That was what led to the United States' declaration of war on Great Britain in 1812.)

And Grimes directly feels at his home in Pennsylvania, not in New York, the brunt of the effects of respondents' actions. It is in Pennsylvania, not in New York, that they cast a shadow on Grimes's right to vote in Pennsylvania and exercise other rights of a Pennsylvania domiciliary. It is in Pennsylvania, not in New York, that they cast a shadow on Grimes' obligation to pay taxes to Pennsylvania

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[12] The circuits are in conflict as between a broad and a narrow interpretation of *Calder* v. *Jones*. *Compare Janmark, Inc.* v. *Reidy*, 132 F. 3d 1200 (7th Cir. 1997) (broad) *with IMO Industries, Inc.* v. *Kieker AG*, 155 F.3d 254 (3d Cir. 1998) (narrow; *Janmark* expressly rejected). The facts here fit under any interpretation, even the narrowest.

as a Pennsylvania domiciliary — the basis on which he has paid taxes to Pennsylvania every year since moving into the state in 1978. It is in Pennsylvania, not in New York, that they cause uncertainty as to Grimes' estate and gift tax planning. As a Pennsylvania domiciliary he owes one set of obligations to Pennsylvania; as a New York domiciliary he would owe quite a different set of obligations to Pennsylvania; and New York levies a gift tax, while Pennsylvania does not. It is at his home in Pennsylvania that respondents' action casts severe uncertainty upon his ability to travel freely to New York without being heavily taxed.

Calder v. *Jones* thus plainly applies here, as the trial court correctly held. Yet the court below did not even cite it, much less follow it. That was clear error.

CONCLUSION

The decision of the court below was not merely erroneous; nor was its error limited to this case. For every taxpayer similarly situated, its reasoning blocks an avenue for the long-sought solution of the injustice presented by the "*Dorrance* problem," which has vexed the courts, including this Court, for almost seventy years. The petition for certiorari should be granted.

Respectfully submitted,

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